

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	EB Docket No. 03-152
	)	
<b>WILLIAM L. ZAWILA</b>	)	Facility ID No. 72672
	)	
Permittee of FM Station KNKS,	)	
Coalinga, California	)	
	)	
<b>AVENAL EDUCATIONAL SERVICES,</b>	)	Facility ID No. 3365
<b>INC.</b>	)	
	)	
Permittee of FM Station KAAX,	)	
Avenal, California	)	
	)	
<b>CENTRAL VALLEY EDUCATIONAL</b>	)	Facility ID No. 9993
<b>SERVICES, INC.</b>	)	
	)	
Permittee of FM Station KYAF,	)	
Firebaugh, California	)	
	)	
<b>H. L. CHARLES D/B/A FORD CITY</b>	)	Facility ID No. 22030
<b>BROADCASTING</b>	)	
	)	
Permittee of FM Station KZPE,	)	
Ford City, California	)	
	)	
<b>LINDA WARE D/B/A LINDSAY</b>	)	Facility ID No. 37725
<b>BROADCASTING</b>	)	
	)	
Licensee of FM Station KZPO,	)	
Lindsay, California	)	

To: Marlene H. Dortch, Secretary  
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S REPLY TO THE [ZAWILA PARTIES']  
OPPOSITION TO THE MOTION FOR SUMMARY DECISION**

1. On May 10, 2016, the Presiding Judge issued *Order*, FCC 16M-18, entering adverse findings of fact against William L. Zawila (Zawila), H.L. Charles Broadcasting d/b/a Ford City Broadcasting (FCB), and Linda Ware d/b/a Lindsay Broadcasting (LB) (collectively, the Zawila Parties).<sup>1</sup> The Zawila Parties did not appeal *Order*, FCC 16M-18, to the Presiding Judge. Rather, on May 26, 2016, the Zawila Parties mailed an untimely interlocutory appeal of *Order*, FCC 16M-18, to the Commission, purportedly as a matter of right under Section 1.301(a)(1) of the Commission's rules.<sup>2</sup> On June 7, 2016, the Enforcement Bureau (Bureau) filed an opposition to the Zawila Parties' Interlocutory Appeal.<sup>3</sup> That appeal remains pending.

2. On July 25, 2016, the Presiding Judge issued *Order*, FCC 16M-24, inviting the Bureau to file a motion for summary decision in light of the entry of adverse findings of fact against the Zawila Parties made in *Order*, FCC 16M-18.<sup>4</sup> Accordingly, on August 9, 2016, the Bureau filed a Motion for Summary Decision (Motion) based upon the Presiding Judge's entry of adverse findings of fact, and also upon the admissions of the Zawila Parties, which occurred by operation of law due to the Zawila Parties' failure to timely respond to the Bureau's requests

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<sup>1</sup> See *Order*, FCC 16M-18 (ALJ, rel. May 10, 2016).

<sup>2</sup> [Zawila Parties'] Appeal of Order (FCC 16M-18) to the Full Commission, mailed on May 26, 2016 (Interlocutory Appeal). The Commission received this pleading on May 31, 2016. See 47 C.F.R. § 1.301(a)(1). Pursuant to Section 1.7 of the Commission's rules, this pleading was deemed filed on the date of its receipt. See 47 C.F.R. § 1.7. Pursuant to Section 1.301(c)(2) of the Commission's rules, appeals filed under paragraph (a) of this section must be filed within 5 days after the order is released. See 47 C.F.R. § 1.301(c)(2). *Order*, FCC 16M-18, was issued on May 10, 2016. Even allowing Zawila, FCB, and LB an additional three days because *Order*, FCC 16M-18, was mailed, any appeal should have been filed no later than May 20.

<sup>3</sup> See Enforcement Bureau's Opposition to the Appeal of Order, FCC 16M-18, to the Full Commission, filed June 7, 2016.

<sup>4</sup> See *Order*, FCC 16M-24 (ALJ, rel. Jul. 25, 2016).

for admission (RFAs).<sup>5</sup> On August 19, 2016, the Bureau received the Zawila Parties' Opposition to its Motion.<sup>6</sup> For the reasons discussed below, the Chief, Enforcement Bureau, through his attorneys, respectfully replies to the Zawila Parties' Opposition.

**This Case Remains Ripe for Summary Decision  
Because There Are No Material Facts In Dispute**

3. The function of summary decision is to “avoid a useless hearing” when no genuine issues of material fact remain.<sup>7</sup> Here, due entirely to the Zawila Parties' continuous stonewalling throughout the discovery process, there are no remaining disputed material facts meriting a hearing, and this case is therefore ripe for summary decision.<sup>8</sup> Indeed, the Opposition does not challenge (or even cite to) any material facts referenced in the Bureau's Motion. Rather, the Opposition appears to be nothing more than an out-of-time veiled collateral attack on the Presiding Judge's May 10, 2016 entry of adverse findings of fact in *Order*, FCC 16M-18 (and, by extension, all of the Presiding Judge's other orders denying the Zawila Parties' frivolous discovery objections). Because the Opposition does not dispute any material facts, or otherwise provide any basis for not proceeding to summary decision, it must be denied.

4. Section 1.251(b) of the Commission's rules requires that an opposition to a

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<sup>5</sup> See Enforcement Bureau's Motion for Summary Decision, filed Aug. 9, 2016 (Motion). As detailed in the Motion for Summary Decision, as a result of the Zawila Parties' failure to timely respond to the Bureau's requests for admission, by operation of Section 1.246(b) of the Commission's rules, the Bureau's requests for admission are deemed admitted. See Motion at 11, para. 12. See also *In The Matter of Joseph Frank Ptak San Marcos, Texas*, Order to Show Cause Why a Cease and Desist Order Should Not Be Issued, 13 FCC Rcd 22168 (ALJ, Order, FCC98D-2, rel. July 6, 1998) (granting summary decision based on facts established by respondent's failure to timely respond to RFAs).

<sup>6</sup> See [Zawila Parties'] Opposition to Enforcement Bureau's Motion for Summary Decision, received Aug. 19, 2016 (Opposition).

<sup>7</sup> *In the Matter of Summary Decision Procedures*, Report and Order, 34 F.C.C.2d 485, 487, para. 6 (1972) (internal citations omitted).

<sup>8</sup> See *Order*, FCC 16M-18, at 6 (finding that, in ordering adverse inferences, the Zawila Parties' overall pattern of discovery violations “buttress the Presiding Judge's conclusion that to helplessly wait further for the Zawila [P]arties to comply with discovery obligations and to fully respond to the Bureau's discovery requests would be a fruitless waste of time”).

motion for summary decision cannot rest on mere denials or allegations, but “*must* show, by affidavit or by other materials subject to consideration by the presiding officer, that there is a genuine issue of material fact for determination at the hearing....”<sup>9</sup> The Opposition, however, fails to provide a reliable basis, by affidavit or other materials, for disputing a single fact set forth in the Bureau’s Motion.

5. Instead, the Opposition appears to rely only on the attachment of the Zawila Parties’ responses to requests for admission (RFAs) that the Bureau served in 2003.<sup>10</sup> The Bureau surmises that this is the Zawila Parties’ attempt to place material facts in dispute, although the Opposition fails to identify any specific material fact that is in dispute as a result of these RFA responses. Moreover, even if these documents could be relied upon (their reliability is addressed below), their untimely submission is irrelevant. As discussed below, the record plainly reflects that the Presiding Judge’s entrance of negative inferences was based on more than the Zawila Parties’ failure to provide their 2003 RFA responses.

6. In *Order*, FCC 15M-33, the Presiding Judge unambiguously directed Zawila, *inter alia*, to revisit and serve responses to the Bureau’s 2003 RFAs:

William L. Zawila shall revisit all interrogatories and requests to produce documents that were served by the Enforcement Bureau, *as well as all requests for admission served in 2003*, and Zawila is ordered to provide positive and cooperative responses.<sup>11</sup>

The Presiding Judge also directed Zawila to negotiate his incomplete discovery responses with the Bureau and to file in the public record a status report with attached declarations describing

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<sup>9</sup> See 47 C.F.R. § 1.251(b) (emphasis added).

<sup>10</sup> See Opposition at Exhibits 2-4. The Zawila Parties allege these responses were originally served on the Bureau in 2003. See, e.g., *id.* at 2-3.

<sup>11</sup> *Order*, FCC 15M-33 (ALJ, rel. Dec. 23, 2015), at 7 (emphasis added).

his production efforts and certifying his good faith negotiations with the Bureau.<sup>12</sup> The Presiding Judge similarly directed FCB and LB “to provide positive and cooperative responses” to any requests for admission, to negotiate in good faith with the Bureau concerning any incomplete responses, and to certify such good-faith negotiations in a declaration document.<sup>13</sup> The Presiding Judge put Zawila on notice in December 2015 that “outright refusals and stonewalling may eventually result adverse inferences and assumptions that would justify resolving *HDO* allegations against [him].”<sup>14</sup>

7. Nevertheless, the Zawila Parties completely ignored the Presiding Judge’s directives. No meaningful discovery responses were timely served, no status reports or declarations were submitted, no contact was made with the Bureau to negotiate responses, and, as “the final nail in the proverbial coffin,”<sup>15</sup> the Zawila Parties failed to appear at the March 29, 2016 status conference that the Presiding Judge specifically called “to take inventory of discovery completed and discovery needed.”<sup>16</sup> It was on these bases – and on the totality of the Zawila Parties’ conduct in this case – that the Presiding Judge concluded negative inferences were warranted. Indeed, as the Presiding Judge recognized, even if the Zawila Parties’ “assertion of compliance [with their 2003 discovery obligations] was supported by the record ... [the Zawila Parties’] utter failure to participate in good-faith discovery” warrants negative inferences.<sup>17</sup> Thus, the introduction now of the Zawila Parties’ purported 2003 RFA responses

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<sup>12</sup> *See id.*

<sup>13</sup> *See Order*, FCC 16M-08 (ALJ, rel. Mar. 14, 2016), at 6 (directing FCB); *Order*, FCC 16M-09 (ALJ, rel. Mar. 15, 2016), at 2 (directing LB).

<sup>14</sup> *Order*, FCC 15M-33, at 6.

<sup>15</sup> *Order*, FCC 16M-18, at 5.

<sup>16</sup> *Order*, FCC 15M-33, at 7.

<sup>17</sup> *Order*, FCC 16M-18, at 4-5.

offers no basis to deny the Bureau's Motion.

**The Three Attachments Are Inadmissible and  
Are Not a Basis for Opposing Summary Decision**

8. The Commission explained in its 1972 Order establishing summary decision procedures that Section 1.251 of the Commission's rules is based upon Federal Rule of Civil Procedure 56.<sup>18</sup> Federal Rule of Civil Procedure 56(c) as presently constructed provides that, if a party alleges a fact is in dispute, an objection may be lodged that the material cited "cannot be presented in a form that would be admissible in evidence."<sup>19</sup> Here, the Zawila Parties' 2003 RFA responses attached to the Opposition could not serve as a basis for establishing that facts remain in dispute because, among other indicia affecting their reliability, they appear to be neither complete nor authentic, and therefore are inadmissible.<sup>20</sup>

9. Specifically, each of these three RFA responses are incomplete<sup>21</sup> and/or inauthentic<sup>22</sup> because they, conspicuously, *all* lack a stamp of receipt by any party at the Commission (*e.g.*, the Bureau, the Office of the Secretary, the Office of the Administrative Law Judges, *etc.*); *all* lack a signature by the attorney of record (the signature lines are blank); *all* have declarations dated three days *before* the date of the RFA responses (raising the question of whether the declarations were made with first-hand knowledge of what ultimately was contained in the RFA responses); and *all* lack certificates of service.<sup>23</sup>

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<sup>18</sup> *In the Matter of Summary Decision Procedures*, Report and Order, 34 F.C.C.2d 485 (1972).

<sup>19</sup> Fed. R. Civ. P. 56(c)(2).

<sup>20</sup> Prior to receiving this Opposition, the Bureau conducted a search of its files and was unable to locate a copy of these purported RFA responses.

<sup>21</sup> *See* Fed. R. Evid. 106.

<sup>22</sup> *See* Fed. R. Evid. 901.

<sup>23</sup> In addition, these incomplete and unsigned documents would also likely violate the best evidence rule in that they are not originals, or even copies of originals. *See* Fed. R. Evid. 1002 (requiring originals), 1003 (permitting copies of originals).

10. In addition, attached to the purportedly served 2003 RFA response from LB is a “declaration” dated ***October 17, 2003***, signed by Cynthia Ramage as “Executor of the Estate of Linda Ware.”<sup>24</sup> In 2004, however, Zawila, as counsel for LB, filed with the Commission an FCC Form 316 (an application for consent to transfer the license) which attached the letters testamentary order from the Superior Court of California appointing Cynthia Ramage as executor. A copy of this document is attached hereto as Exhibit 1. As shown therein, Ms. Ramage was not appointed by the Court as executor of Linda Ware’s estate until ***May 19, 2004*** – more than 7 months *after* the date of the declaration attached to LB’s 2003 RFA response.<sup>25</sup> While this potential misrepresentation would typically go to weight, and not to admissibility, because there is no indication in the record that Ms. Ramage had any involvement with, or authority over, LB’s station, KZPO(FM), prior to becoming executor, her declaration in support of LB’s 2003 RFA response should be deemed inadmissible because it is not apparently based on first-hand knowledge.<sup>26</sup>

11. In sum, based on the multiple bases for inadmissibility for all three of the purported RFA responses, they cannot be relied upon to suggest that there are any material facts in dispute.<sup>27</sup>

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<sup>24</sup> Opposition at Exhibit 5.

<sup>25</sup> Zawila apparently also served as Ms. Ramage’s attorney in the letters testamentary matter before the Superior Court of California. See Exhibit 1 attached hereto.

<sup>26</sup> Moreover, if Ms. Ramage was not the executor, and not involved in the operation of the station, her declaration would likely be based on inadmissible hearsay. See Fed. R. Evid. 802.

<sup>27</sup> Although filed by Zawila (as counsel for his station/himself, FCB and LB), the Opposition is almost entirely lacking in legal or record citation. It thus offers no basis, factual or legal, to find that summary decision is inappropriate.

**The Opposition Is Nothing More Than An Untimely  
Attempt to Justify The Zawila Parties' Discovery Failures**

12. The Opposition is primarily devoted to repeating baseless objections to the Bureau's discovery requests that the Presiding Judge already rejected. Specifically, the Opposition claims that the Bureau's discovery requests have "been impossible to deal with due to *dead parties, dead attorneys, [and] dead witnesses....*"<sup>28</sup> The Presiding Judge previously acknowledged, however, that Zawila is "in an excellent position to provide answers"<sup>29</sup> to the Bureau's discovery requests regarding the various stations at issue because "Zawila, as registrant and lawyer, must or should know the multiple background facts" that the Bureau is seeking.<sup>30</sup> As such, *even if* the Zawila Parties were permitted to late-file objections to the Presiding Judge's discovery rulings that resulted in the negative inferences, the Opposition offers no explanation for why Zawila, still very much alive, and the attorney at all relevant times for the other two Zawila Parties, has not been able to provide the requested discovery. Thus, rather than presenting a basis for revisiting discovery objections (and for denying summary decision), the Opposition serves only as a reminder of the Zawila Parties' continuous stonewalling throughout the discovery process.

**Conclusion**

13. For the reasons stated above, the Zawila Parties have failed to offer any grounds for challenging the Bureau's Motion for Summary Decision. Accordingly, the Bureau respectfully requests that the Presiding Judge deny the Opposition and grant its Motion.

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<sup>28</sup> Opposition at 4 (emphasis added). Although H.L. Charles and Linda Ware are deceased, all indications are that Zawila oversaw (and continues to handle) many, if not all of, the affairs of FCB and LB's respective stations. *See, e.g., Order*, FCC 15M-33, at 4, 6, and n.6.

<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Id.* at 6.



Respectfully submitted,

Travis LeBlanc  
Chief, Enforcement Bureau

A handwritten signature in black ink, appearing to read "Pamela S. Kane", written over a horizontal line.

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August 30, 2016

## **EXHIBIT 1**

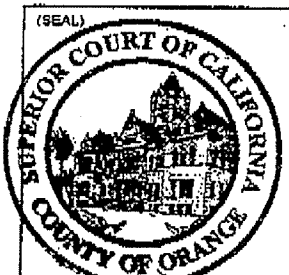
### **Letters Testamentary Order**

DE-150

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): WILLIAM L. ZAWILA Attorney at Law 12600 Brookhurst Street - Suite 105 Garden Grove, CA 92840 ATTORNEY FOR (Name): <u>Petitioner CYNTHIA RAMAGE</u>		TELEPHONE AND FAX NOS.: (714) 636-5040	FOR COURT USE ONLY <b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE LAMOREAUX JUSTICE CENTER MAY 19 2004 ALAN SLATER, Clerk of the Court <i>D Davis</i> BY D. DAVIS
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 341 The City Drive MAILING ADDRESS: Orange, CA 92668 CITY AND ZIP CODE: BRANCH NAME:			
ESTATE OF (Name): LINDA WARE		DECEDENT	
<input checked="" type="checkbox"/> TESTAMENTARY <input type="checkbox"/> OF ADMINISTRATION WITH WILL ANNEXED		LETTERS <input type="checkbox"/> OF ADMINISTRATION <input type="checkbox"/> SPECIAL ADMINISTRATION	
		CASE NUMBER: A224586	

- LETTERS**
- ☒ The last will of the decedent named above having been proved, the court appoints (name):  
CYNTHIA RAMAGE
    - ☒ executor.
    - ☐ administrator with will annexed.
  - ☐ The court appoints (name):
    - ☐ administrator of the decedent's estate.
    - ☐ special administrator of decedent's estate
      - ☐ with the special powers specified in the Order for Probate.
      - ☐ with the powers of a general administrator.
      - ☐ letters will expire on (date):
  - ☒ The personal representative is authorized to administer the estate under the Independent Administration of Estates Act ☒ with full authority ☐ with limited authority (no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
  - ☐ The personal representative is not authorized to take possession of money or any other property without a specific court order.

WITNESS, clerk of the court, with seal of the court affixed.



Date: MAY 19 2004  
Clerk, by ALAN SLATER  
*Diane A. Davis*  
(DEPUTY)  
DIANE A. DAVIS

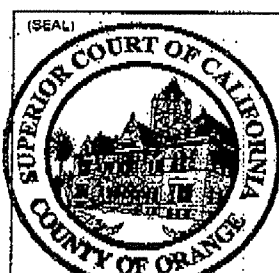
- AFFIRMATION**
- ☐ PUBLIC ADMINISTRATOR: No affirmation required (Prob. Code, § 7621(c)).
  - ☒ INDIVIDUAL: I solemnly affirm that I will perform the duties of personal representative according to law.
  - ☐ INSTITUTIONAL FIDUCIARY (name):  
I solemnly affirm that the institution will perform the duties of personal representative according to law. I make this affirmation for myself as an individual and on behalf of the institution as an officer.  
(Name and title):

4. Executed on (date): May 6, 2004  
at (place): Garden Grove, California.

*Cynthia Ramage*  
(SIGNATURE) CYNTHIA RAMAGE

**CERTIFICATION**

I certify that this document is a correct copy of the original on file in my office and the letters issued by the personal representative appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.



Date: MAY 19 2004  
Clerk, by ALAN SLATER  
*Diane A. Davis*  
(DEPUTY)  
DIANE A. DAVIS

## CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 30<sup>th</sup> day of August, 2016, sent copies of the foregoing "ENFORCEMENT BUREAU'S REPLY TO THE [ZAWILA PARTIES'] OPPOSITION TO THE MOTION FOR SUMMARY DECISION" to:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
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Alicia McCannon